IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 7720 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

---

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHARAT CHEM LABORATORIES
VERSUS
STATE OF GUJARAT

Appearance:
MR MJ PARIKH for the Petitioner
MS MANISHA LAVKUMAR, AGP, for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 31/07/2000

C.A.V. JUDGMENT

1. Challenge has been made by the petitioner in this special civil application to the order of recovery

of amount, annexure `D'. Under annexure `D' a demand has been made for recovery of Rs.7,99,57-50.

2. This is a recovery order and the petitioner is challenging the same on the ground that without adjudication thereof by the competent authority, this could not have been ordered and more so for amount of Rs.14,857=50 and Rs.15,645/=.

3. The facts of the case, in brief, are that on 3-12-1996, the respondent has given rate contract to the petitioner for supply of Methylergometrine Tablets I.P.. The petitioner informed to the respondent that the aforesaid drug was declared as Narcotic drug subsequently and therefore requested to cancel the order. As per the contract between the parties, relevant portion of which has been reproduced in reply, this recovery order has been made. Hence, this special civil application.

4. Learned counsel for the petitioner relying on the decision of the Apex Court in the case of State of Karnataka vs. Shree Rameswara Rice Mills reported in AIR 1987 SC 1359 and the decision of this court in the special civil application No.2474 of 1982 decided on 9th August, 1994, (Coram: M.S. Parikh, J) contended that this recovery order is without jurisdiction. In such matters, the adjudication has to be made by the some authority after hearing the petitioner and then only such an order could have been made for recovery of the amount.

5. Ms. Manisha Lavkumar, AGP, on the other hand, contended that as per the condition of agreement between the parties, this is permissible to the authority to which no exception can be made. She contended that the decisions of the Apex Court as well as of this Court are distinguishable on the facts. Ratio is on the facts of the case and here in this case when the contract authorises the authority to recover from the Contractor as damages a sum not exceeding 1/2% of the price of the stock, which Contractor has failed to deliver, these orders of the respondent are perfectly legal and justified.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. Prima-facie I am satisfied that the cases on which reliance has been placed by the learned counsel for the petitioner may be distinguishable on the facts

of this case. Though learned counsel for the petitioner made all endeavour to make submissions on all aspects of the matter on merits, but as I think that it is a matter where the appropriate remedy for the petitioner would have been to file a civil suit wherein all these questions could have been gone into and coupled with the fact that it is a contractual matter, I do not consider it to be appropriate to give out the findings on all these contentions raised otherwise it may prejudice the case of the petitioner before the civil court. It is a contractual matter wherein many articles of contract are to be interpreted and then the court has to decide whether this demand is justified or not. Reference made to clause (7) of the Contract prima-facie gives out that possible this power may be there with the authorities and for this the appropriate remedy for the petitioner is to file a civil suit. Only on this ground, this petition is dismissed. Rule discharged. Interim relief if any, granted stands vacated. In the facts of this case, no order as to costs.

****

zgs/-